IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 595 of 2001

to

FIRST APPEALNo 609 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SPECIAL LAND ACQUISITION OFFICER

Versus

CHHATRASINH PUNABHAI

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Appearance:

GOVERNMENT PLEADER for Petitioners

MR VIJAY N RAVAL for Respondent No. 1

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/02/2001

ORAL JUDGEMENT

1. Heard the learned AGP for the appellant and Mr. Vijay N. Raval for the respondent.

2. These are the appeals filed by the appellant abovenamed against the judgement and award dated 10th April, 2000 passed by the learned Civil Judge (SD), Panchmahal at Godhara in group of land Reference cases being Land Reference Cases Nos. 1039/90 to 1062/90, under which, the learned trial Judge had granted additional compensation of Rs. 6.20ps per Sq. Mt. over and above the compensation already awarded by the Land Acquisition Officer for the lands acquired. The claimants were also directed to be paid solatium at the rate of 30% and additional amount at the rate of 12% p.a. from the date of Notification u/s. 4 of the Land Acquisition Act or from the date of possession, which ever is earlier, on market value and interest at the rate of 9% for the first year and at the rate of 15% for the subsequent year from the date of taking over the possession till amount is deposited.

3. It appears that the lands of the appellant were required to be acquired for the public purpose viz. for the project of Narmada Main Canal. The acquiring body had initiated the acquisition proceedings in the month of 24th April, 1987 and after following the due procedure of law, lands of the respondents abovenamed were acquired by the Land Acquisition Officer. Thereafter, the award was made by the Land Acquisition Officer.

4. The respondents abovenamed, were not satisfied by the aforesaid award and therefore, the respondents submitted an application for reference under Section 18 of the Land Acquisition Act. The matter was referred to the Court. The learned Civil Judge issued notices to the respondents and after recording the evidence and hearing the parties, the learned Civil Judge found that the compensation awarded by the Land Acquisition Officer was inadequate and therefore, the learned trial Judge found that the aforesaid amount should be awarded as additional compensation to the respondents. Therefore, the learned Reference Court passed the aforesaid award in favour of the respondents and against the appellant.

5. Feeling aggrieved by the said judgements and awards of the learned Reference Court, the appellant abovenamed has preferred these appeals under Section 54 of the Land Acquisition Act, 1984 read with Section 96 of the Civil Procedure Code, 1908.

6. It has been mainly contended that the

compensation awarded by the Reference Court is on higher side and therefore, it is prayed that the present appeals be allowed and the judgements and awards of the Reference Court be set aside.

7. I have heard the learned advocatse for the parties and perused the papers.

8. During the course of hearing, copy of the Judgement of this Court in First Appeal No. 438/2000 was shown to me. The said judgement was rendered on 4.7.2000 by this Court consisting of Hon'ble Mr. Justice M.H. Kadri and myself. There, the matter related to the same point and it is submitted that the lands covered by the said judgement and the lands, which are subject matter of these Appeals are adjoining to one another and there is no dispute that all the lands are having similar fertility and they are similar and identical lands for all purposes. The Notification issued under Section 4 (1) of the said Act in the previous matter as well as in the present matter were actually issued in the year 1989. In the previous matter, the award was made by the Land Acquisition Officer on 6th December, 1989, whereas, in the present matter, the award was made by the Land Acquisition Officer on 21.11.1989. Therefore, it can be said that the awards made by the Land Acquisition Officer in both the matters have been made almost at the same time.

9. Therefore, lands are similar and identical and notification under Section 4(1) are almost of the same time in both the matters and therefore, the facts remain that the judgement and award of this Court in the aforesaid First Appeal will cover in the present Appeal also. The said judgement has been rendered by the Division Bench of this Court and therefore, to that extend, it is binding to this court also. Therefore, when the aforesaid amount was finally awarded in the aforesaid matter, the said amount is required to be awarded in the present matter and therefore, it is very clear that once it is found that the aforesaid judgement is binding to this Court and when the lands are identical then in that context, in this matter, the proper and just compensation would be Rs. 7 per Sq. Mt. as was awarded in the previous matter. In the previous matter, the compensation was awarded at Rs. 7 per Sq. Mt., therefore, once the said judgement is found to be binding to this Court and comparing the subject matter of the two matters, it is clear that the compensation awarded by the Reference Court cannot be said to be excessive one. The amount of compensation is therefore not found to be

excessive. Then, there is no question of interfering with the said judgement and award of the Reference Court.

9. However, it is clarified that the claimants / respondents shall not be entitled to solatium on the amount under Section 23(1-A) of the Act and no interest shall be paid on the amount of solatium as per the decision of the Prem Nath Kapur Vs. National Fertilizers Corporation of India, [1998 (2) SCC 71].

10. With this clarification, these appeals are ordered to be dismissed. There shall be no order as to costs.

(D.P. Buch, J.)

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